

**Mississippi Institutions of Higher
Learning
Request for Qualifications
2019:0830**

– Feasibility Study –

REQUEST FOR QUALIFICATIONS: FEASIBILITY STUDY

Issue Date: August 9, 2019
Project No.: 2019:0830 Feasibility Study
Responses Due: August 30, 2019
Contact Name: Phil Cumberland
Contact Phone Number: 601.432.6315
Contact E-mail Address: pcumberland@mississippi.edu

The Board of Trustees of State Institutions of Higher Learning (IHL) requests Qualifications Responses for a feasibility study to determine the validity of Delta State University (DSU) pursuing a lease and commercial development of all, or a portion, of a 55+ (fifty five plus) acre parcel of land on the Cleveland, Mississippi campus. DSU's Request for Proposals ("RFP") for the proposed development is attached as Attachment A to this RFQ.

Agreements entered into will be between the IHL and the Awarded Firm (FIRM).

Qualifications Responses are due and will be opened at 2:00 PM CT on Friday, August 30, 2019 at 3825 Ridgewood Road, 4th floor, conference room, Jackson, Mississippi 39211. Names of respondents will be read aloud. No other information will be discussed at that time. No activity on the part of the respondents at the Qualifications Responses opening, other than attendance and note taking, is permitted. Any attempt to qualify or change any Qualifications Response by any respondent in attendance may result in the rejection of the Qualifications Response.

It is the intent of IHL to enter into a firm fixed price contract for the services outlined herein. The Qualifications Response should be based on a fixed fee that includes all anticipated fees.

Qualifications Responses must be submitted no later than 2:00 PM CST, Friday, August 30, 2019.

E-Mail to:
pcumberland@mississippi.edu
Fax to:
601-432-6315
Attention: Phil Cumberland

Deliver to:
Board of Trustees of State Institutions of Higher Learning
Attention: Procurement Department
3825 Ridgewood Road Suite 418
Jackson, MS 39211

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INTRODUCTION

The Mississippi Board of Trustees of State Institutions of Higher Learning (IHL Board) is a constitutional governing body created in 1943 for the purpose of overseeing and governing the public universities in Mississippi which make up the IHL System, including Alcorn State University, Delta State University, Jackson State University, Mississippi State University, Mississippi University for Women, Mississippi Valley State University, University of Mississippi including the University of Mississippi Medical Center, University of Southern Mississippi, and the Executive Office. The Southern Association of Colleges and Schools is the accrediting body for each of the public universities in Mississippi.

During fall 2018 the system enrolled more than 83,000 students. It has an employee base of over 27,000 individuals of which faculty make up approximately 5,800 of the total employee count. The system offers over 800 degrees and graduates approximately 17,000 students annually.

The University of Mississippi Medical Center is part of the IHL System. Integral to its education and research missions, UMMC provides wide-ranging patient care programs through four specialized hospitals on the Jackson campus and is the only level one trauma center in the state employing over 9,600 full- and part-time employees.

This invitation for a Request for Qualifications (RFQ) is issued by Board of Trustees of the State of Mississippi Institutions of Higher Learning. The IHL Board reserves the right, without qualifications, to select any response as a basis for negotiation, to reject any or all responses, and to exercise its discretion and apply its judgment with respect to any response submitted. The IHL Board reserves the right to recall and end or suspend this RFQ at any time leading up to the time of final contract signing. This is not a formal bid process and the IHL Board is not required to select the lowest response. This is merely an invitation to submit Qualifications.

BACKGROUND

For Fiscal Year 2020 the total operating budget for the Mississippi Institutions of Higher Learning is over \$4.5 billion. Of this amount, the IHL receives over \$700 million in state appropriations. The budgets at the individual universities range from \$60 million to over \$1.8 billion.

PURPOSE

In accordance with **IHL Board Policy 714 Origination, Expansion, or Acquisition of Business or Healthcare Enterprise**, the IHL Office will seek a financial study prior to Board consideration of an institution's request to acquire or engage in new or substantially expanded operations of a business or a healthcare facility. This may include, but is not limited to, any creation, expansion, or acquisition of a business or healthcare enterprise, business-type functions of institutional auxiliaries or proprietary operations, significant strategic financial initiatives of an institution, or material financial initiatives entered into by an institution. The FIRM shall

review the underlying business and market assumptions of the proposed project, as stated in the Scope of Work.

PART I - SCOPE OF WORK

Under the direct supervision and control of the IHL Office, the Awarded Firm (FIRM) will be responsible for all analysis and assessment of the Delta State University lease and commercial development of all, or a portion, of a 55 plus acre parcel of land on its campus at 1003 West Sunflower Road, Cleveland, Mississippi. Legal description is *SE 1/4, Section 17 Township 22, Range 5, Cleveland, Bolivar County Mississippi*. The university received a proposal from Collegiate Lodging Systems, LLC dated May 16, 2019. The terms of the contract, goals, and potential uses of the project are listed in the Request for Proposals issued by DSU for Commercial Land Development in Attachment A.

The feasibility study will review the development of the entire 55-acre site (+/-). The front 10 acres will provide enough space for a hotel and conference center, surface parking sufficient for guests, as well as scheduled events, the recreation area, and an amphitheater to accommodate 1,500 to 2,000 people. The remaining acreage will be dedicated to housing for faculty, students and, alumni in a multi-phased development. The hotel facility will be built with 100 rooms. The additional rooms will be added as the market dictates. The conference center will be able to accommodate up to 400 persons maximum at a given time. Awarded FIRM will have access to proposal considered for development. The proposal also contemplates up to 15 stand-alone housing structures, two apartment/condominium structures to house 160 people, and possible retail opportunities.

IHL will consider experience, qualifications, and technical competence in the types of work required, overall quality of the Qualifications Responses, qualifications of key staff, ability to perform all aspects of services, past performance on similar types of projects in regions with similar economic characteristics, delivery approach including the ability to respond to the IHL's needs, demonstrated ability to mobilize quickly and meet project schedules, ability to perform with limited IHL oversight, availability and responsiveness of key staff performing the work on the project, and familiarity with IHL practices and procedures.

The prospective firm shall make evaluations solely for the protection of the fiduciary responsibilities of IHL Board and shall be compensated without regard for whether the proposed development is carried to completion. Complete independence in fact and appearance for professional judgment exercised in the evaluation of the proposed development is expected from respondents to this Request for Qualifications.

Overall Goal for Engagement

A. The FIRM shall

1. Review the underlying business and market assumptions of the proposed project,
2. Evaluate historical financial information,
3. Consider current and future market conditions in the field of the project,

4. Evaluate pro forma financial information used in the decision-making process in order to provide professional judgment and advice to the IHL Board on the feasibility of the:
 - 4.1 Development costs
 - 4.2 Projected rents and viable utilization levels of the proposed hotel, conference center, amphitheater, stand-alone housing, and apartments/condominiums
 - 4.3 Ground rent
 - 4.4 Operating expenses
 - 4.5 Capital reserve
 - 4.6 Real estate taxes, if applicable
 - 4.7 Net operating income
 - 4.8 Annual debt service
 - 4.9 Net cash flow
 - 4.10 Equity returns
 - 4.11 DSU participation
- B. Prepare a written analysis of these and other matters relevant for the IHL Board's consideration. The written analysis shall;
 1. Provide advice to the Board — which is independent of any advice provided by or to the institution — as to the anticipated effect(s) of the proposed transaction and operations on the institution;
 2. Make a determination, based on the analysis contained in the report, as to whether the proposed project justifies approval by the Board; and,
 3. Explain the likely impacts and prudence of the proposed transaction.

PART II – RFQ GENERAL TERMS AND CONDITIONS

A. EXPLANATION OF CONTRACT TERMS AND CONDITIONS

Respondents have read and understand the following general terms and conditions related to this solicitation:

1. Awarded vendor will be expected to sign a Contract for Services that contains the provisions set out within Part IV.
2. IHL reserves the right to reject any and all responses and IHL has the right to waive minor defects or variations of a response from the exact requirements of the specifications that do not affect the price, quality, quantity, delivery, or performance time of the services being procured. If a respondent does not submit sufficient information in its Qualifications Response for IHL to properly evaluate, IHL has the right to require such additional information as it may deem necessary after the time set for receipt of Qualifications Responses, provided that the information requested does

- not change the price, quality, quantity, delivery, or performance time of the services being procured.
3. In case of default of vendor, IHL reserves the right to purchase any or all items and/or services in default in open market, charging vendor with all costs of default.
 4. All materials, products and/or services offered must be guaranteed to meet the requirements of the specifications indicated, given or referred to in this solicitation.
 5. IHL reserves the right to make an award which is determined to be to the best interest of the State of Mississippi. The award does not have to go to the lowest respondent although value for services offered is a consideration. This is not an advertisement for bids. This is a request for qualifications for a prospective service contract.
 6. IHL reserves the right to reject any Qualifications Responses that do not conform to the requirements set forth in this RFQ. Qualifications Responses may be rejected for reasons which include, but not limited to, the following:
 - 6.1 The Qualifications Response contains unauthorized amendments to the requirements of the RFQ;
 - 6.2 The Qualifications Response is conditional;
 - 6.3 The Qualifications Response is incomplete or contains irregularities which make it indefinite or ambiguous;
 - 6.4 The Qualifications Response is received late;
 - 6.5 The Qualifications Response is not signed by an authorized representative of the party;
 - 6.6 The Qualifications Response contains false or misleading statements of references; and,
 - 6.7 The Qualifications Response does not offer to provide all services required by the RFQ.
 7. Respondent represents that he/she has not retained a person to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in the Qualifications Response.
 8. The right of vendor to proceed may be terminated after notice and hearing if the Board of Trustees of State Institutions of Higher Learning determines that vendor or any agent or other representative of vendor gave or agreed to give an inducement to any IHL employee or official or to the spouse of same in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request associated with this prospective agreement, as listed in Miss. Code Ann. 97-11-53.
 9. The respondent's signature on the RFQ is a guarantee that the prices quoted have been arrived at without collusion with other eligible respondents and without effort to preclude the Board of Trustees of State Institutions of Higher Learning from obtaining the lowest possible competitive price.
 10. From the date of release of this RFQ, until a Letter of Intent is issued, all contacts with the IHL shall be made through the Procurement Office unless otherwise noted in the RFQ. Violation of this condition may be considered sufficient cause for rejection of a Qualifications Response, irrespective of any other consideration.
 11. The procurement method to be used is that of competitive negotiation from which IHL is seeking the best combination of price, experience, and quality of service.

Discussions may be conducted with vendors who submit Qualifications Responses. Likewise, IHL also reserves the right to accept any Qualifications Response as submitted for contract award, without substantive negotiation of offered terms, services, or prices. For these reasons, all parties are advised to propose their most favorable terms initially.

12. The respondent should mark any and all pages of the Qualifications Response considered to be proprietary information which may remain confidential in accordance with Mississippi Cod Annotated 25-61-9 and 79-23-1 (1972, as amended). Any pages not marked accordingly will be subject to review by the general public after award of the contract. Requests to review the proprietary information will be handled in accordance with applicable legal procedures.
13. The IHL Board reserves the right to consult with outside parties in evaluation of Qualifications Responses. All Qualifications Responses become the property of the IHL Board upon receipt and will not be returned to the respondent.

B. CONTRACT TYPE AND PRICE

It is anticipated that any contract negotiated subsequent to this solicitation will be awarded on a cost reimbursement basis of an hourly rate with a maximum cost not to be exceeded. A Schedule of Professional Fees and Expenses should be submitted with the Qualifications Response.

C. QUALIFICATIONS RESPONSE SUBMISSION

Submission Instructions

1. Qualifications Responses must be received, in writing, by IHL by the date and time specified. IHL is not responsible for any delays in delivery or expenses for the development or delivery of Qualifications Responses. Any Qualifications Responses received after the Qualifications Responses opening time will be rejected and returned unopened.
2. Vendors must submit an original, marked as such, and five (5) copies of all materials required for acceptance of their Qualifications Response by the Qualifications Response due date.
3. To prevent opening of Qualifications Responses by unauthorized individuals, all copies of the Qualifications Responses that are delivered must be sealed in a package clearly marked **DO NOT OPEN** with RFQ number and project information as on Cover Sheet.
4. Qualifications Responses or alterations by phone will not be accepted.
5. Legibility, clarity, and completeness of Qualifications Responses are important and essential.
6. Qualifications Responses must be signed by individual(s) legally authorized to bind the firm. All information requested should be submitted. Failure to submit all information requested may result in receiving a lowered evaluation of the

- Qualifications Response. Qualifications Responses, which are substantially incomplete or lack key information, will be found nonresponsive and rejected.
7. Qualifications Responses must contain a statement that the Qualifications Response and the prices(s) contained therein shall remain firm for a period of one hundred twenty (120) days.

Qualification Response Requirements and Outline

The FIRM's Qualifications Response shall include the following:

1. Letter of Transmittal – limit to four printed pages.
 - 1.1 A brief description of the FIRM's understanding of the work to be performed and make positive commitment to perform the work.
 - 1.2 History and years in business.
 - 1.3 Bios and qualifications of key staff.
 - 1.4 State whether or not your FIRM has been involved in any litigation within the past five (5) years, arising out of your performance. Explain fully if it has been involved in any litigation.
 - 1.5 Indicate the number and dates of amendments that you have received.
2. Unique qualifications that your FIRM could bring to the project. Include clear and measurable information that demonstrate your FIRM's understanding of the relationship of the tasks undertaken to the overall objectives of the scope of work. Examples could include innovative approaches during past performances with other projects — how were approaches to project tasks supportive of meeting the desired outcomes in an effective, cost efficient manner? If sub-consultants are to be utilized, their experience and credentials should be presented along with a detailed explanation of how these firms will participate in the project engagement. Limit response to no more than three examples on five printed pages.
3. A written acknowledgement of the Standard Contract Terms which are set forth in Part IV of this RFQ. Specific terms may be reserved for future negotiations, but must be clearly identified and reasons given for the reservation.
4. List of references that demonstrate relevant experience to this project. These references may be contacted by IHL staff.
5. List any exceptions to this RFQ.
6. Qualifications Response Signature Approval (Section O).
7. The FIRM's tax identification number. Copies of business licenses, professional certifications and other credentials, together with evidence the proposer is in good standing and qualified to conduct business in Mississippi.

Qualifications Responses which fail to address each of the submission requirements above may be deemed non-responsive and will not be further considered. Note that responses to questions must be specifically answered within the context of the submitted response. Responses that utilize references to external materials as an answer will be considered non-responsive.

D. SOLICITATION SCHEDULE

Date of Issuance	Friday, August 9, 2019
Pre-Qualifications Response Conference and Site Visit *	Friday, August 16, 2019
Questions from Respondents Due	Tuesday, August 20 at 2:00 PM
Answers to Respondents Questions Due	Friday, August 23, 2019 By Close of Business
Qualifications Responses Due	Friday, August 30, 2019 at 2:00 PM
Notice of Award (Estimated)	Wednesday, September 4, 2019
Contract Start Date (Estimated)	Monday, September 9, 2019

*Contact Phil Cumberland at pcumberland@mississippi.edu for call-in information and location.

E. QUALIFICATION RESPONSE PREPARATION EXPENSES

The IHL Board will not pay any costs incurred in the preparation and submission of Qualifications Responses.

F. WITHDRAWAL OF QUALIFICATION RESPONSE

Qualifications Responses may be withdrawn by written notice received at any time before award.

G. QUALIFICATION RESPONSE MODIFICATIONS

Any requests to modify a Qualifications Response must be submitted in writing by the primary respondent. All requests for modifications must be submitted prior to the Qualifications Response submission deadline. The IHL Board reserves the right to deny any requests for Qualifications Response modification.

H. EQUAL OPPORTUNITY

Contracts, purchases and other financial transactions are administered by the IHL Board equally, without regard to race, color, creed, sex, national origin, disability or age.

I. AMENDMENTS TO QUALIFICATION RESPONSE SPECIFICATIONS

1. Respondents shall be notified in writing of any changes in the specifications contained in this Request for Qualifications.

2. All addenda, amendments, and interpretations to this solicitation shall be in writing. Any amendment or interpretation that is not in writing shall not legally bind IHL.
3. Respondents shall acknowledge receipt of any amendment to the solicitation by signing and returning the amendment with the Qualifications Response. The acknowledgement must be received by the IHL by the time and at the place specified for receipt of Qualifications Responses.
4. Should an amendment to the RFQ be issued, it will be posted on the IHL website <http://www.mississippi.edu/finance/procurement.html>. Further, respondents must acknowledge receipt of any amendment to the solicitation by signing and returning the amendment with the Qualifications Response, by identifying the amendment number and date in the space provided for this purpose on the Qualifications Response form, or by letter. The acknowledgement must be received by IHL in the time and at the place specified for receipt of RFQs. It is the respondent's sole responsibility to monitor the website for amendments to the RFQ.

J. QUESTIONS CONCERNING QUALIFICATION RESPONSES

1. Request for additional information and questions should be addressed to Procurement Officer Phil Cumberland in writing at pcumberland@mississippi.edu no later than the date listed in the Solicitation Schedule in Section D.
2. The IHL shall provide written response to all questions received in writing on or before the written question submittal deadline.
3. Questions received in relation to this RFQ shall be answered and sent to all Respondents who are listed as having obtained the RFQ.
4. All questions and answers will be published on the IHL website <http://www.mississippi.edu/finance/procurement.html> within the time reflected in the Solicitation Schedule in Part II Section D.

K. EVALUATION

The evaluation of the responses submitted in response to this solicitation will be scored by an IHL selected team. The scoring will be based on the following factors:

1. Qualifications, Experience and technical competence of the (a) firm, (b) specific individuals, (c) strengths of sub-consultants that are part of the project team.
2. Scheduling of work to be accomplished and ability to begin fieldwork by September 9, 2019
3. Delivery approach, availability and responsiveness of key staff performing the work on the project, familiarity with IHL System practices and procedures.
4. Price

L. PERIOD OF CONTRACT

The contract to be negotiated shall expire upon completion of the Scope of Work as written in Part I.

M. PAYMENTS

Once a contract is negotiated, the IHL Board shall pay, or make payments on, consideration in accordance with the following schedule or procedure:

The IHL Board will pay invoices in accordance with the law related to timely payment for purchases by public bodies (Miss Code Ann. Section 31-7-301 et seq., Rev.1990). The final payment shall be made after completion and acceptance of the professional services. In no instance will a payment be made that causes the total amounts paid to exceed the contract amount.

Pursuant to Mississippi law, the IHL Board is exempt from state sales and use taxes. The IHL Board will not pay excise, personal property, income, value added, or other similar taxes. If the FIRM is liable for such taxes; FIRM shall take such into consideration. It is the FIRM's responsibility to contact local taxing authorities in the state and county where equipment will be located to determine possible tax liabilities in connection therewith.

N. KEY PERSONNEL

Prior to removing, replacing, or diverting any of the specified individuals presented in Qualifications Response, the FIRM shall notify IHL reasonably in advance and shall submit justification, including proposed substitutions, in sufficient detail to permit evaluation of the impact on this contract. No replacement shall be made by the FIRM without the written consent of IHL Board staff. IHL Board staff must ratify in writing the change. Key personnel for this contract include:

(Key Personnel are those persons assigned by the FIRM to perform services).

O. QUALIFICATIONS RESPONSE SIGNATURE APPROVAL

Company Name: _____

Address: _____

City/State/Zip: _____

Telephone: _____ FAX #: _____

Email address: _____

Federal Tax ID (or Social Security #): _____

Print Name: _____ Title: _____

Signature: _____ Date: _____

This form must be signed. All signatures must be original and not photocopies. Signature signifies the Qualifications Response and the price(s) contained therein shall remain firm for a period of one hundred twenty (120) days.

PART III - PROJECT NEGOTIATIONS AND AWARD OF CONTRACT

Project Negotiations

The IHL Board reserves the right to:

1. Seek outside technical analysis of any Qualifications Response.
2. Conduct discussions with any or all respondents, or to make an award of a contract without such discussions based only on evaluation of the written Qualifications Responses. IHL reserves the right to contact and interview anyone connected with any past or present projects with which the respondent has been associated. IHL may make a written determination showing the basis upon which the award was made and such determination shall be included in the procurement file.
3. Request additional information or clarification from a respondent. The Respondent's cooperation during the evaluation process in providing the IHL staff with adequate responses to request for clarification will be considered a factor in the evaluation of responsiveness. Lack of such cooperation or failure to provide the information in a manner required may, at the State's discretion, result in the disqualification of the Qualifications Response.
4. Request oral presentations if additional information and/or clarification is required.
5. Visit the respondent's place of business to verify the capacity and type of equipment and personnel available for servicing this contract prior to making a determination in awarding of this contract. In the event that IHL rejects any, any part of or all Qualifications Responses, IHL shall not be responsible for any costs incurred by any respondent in submitting a Qualifications Response.

Award of Contract

1. If a satisfactory contract cannot be negotiated with the highest qualified respondent, negotiations will be formally terminated. Negotiations shall then be undertaken with the second highest rated and so on.
2. A contract will be issued after the award (if an award is made) and will become an integral part of the contract process.
3. A written notice to proceed will be issued prior to commencement of services.
4. Responsive respondent will be notified in writing of IHL's intent to award a contract as a result of this RFQ.
5. After notification of the intent to award is made, and under the supervision of agency staff, Qualifications Response scoring and pricing will be available for public inspection, by appointment, from 8:30 AM to 2:00 PM at 3825 Ridgewood Road, fourth floor, room 412, Jackson, Mississippi. Vendors may schedule reviews with the Procurement Officer.

PART IV – IHL STANDARD SERVICES CONTRACT

Contractor: _____ Phone Number: _____
Address: _____
City: _____ State: _____ Zip Code: _____

Are you currently receiving a benefit from the Public Employees' Retirement System of Mississippi? Yes ☐ No ☐
If the answer is yes, individual must contact the Office of Human Resources (601.432.6134) to discuss eligibility of retirees to earn compensation from the IHL Executive Office prior to completing this form.

U.S. Citizen: Yes ☐ No ☐ If no, Country of Citizenship: _____ and Residence: _____
If no, are you a non-resident alien? _____ Visa Type: _____ Resident Alien: _____
Incorporated: Yes ☐ No ☐ Small Business, Minority, Woman-Owned? (Circle all applicable)

U.S. Social Security Number or U.S. Federal Tax Identification Number: _____

STATEMENT OF WORK:

IHL has determined that these services are essential and **could not** satisfactorily be performed by IHL Executive Office employees. Therefore, the Contractor noted above will perform the services and/or tasks as follows: _____

Contractor shall provide the following: _____

(Please reference attachment if additional space required. Any attachment is incorporated into this contract.)

Contract Begin Date: _____ Contract Completion Date: _____

CONSIDERATION AND COMPENSATION: Account to be Charged: Not to exceed \$

Rate of Pay: (indicate hourly, daily, scheduled deliverables/tasks, total project, etc.) \$ _____

(If charged to a Corporation for National and Community Service Grant, consultant daily rate cannot exceed \$540.)

Payment Terms: _____

Services shall not exceed: \$ _____ Expenses shall not exceed: \$ _____

Nature of Expenses: _____

Signed original invoices referencing the IHL contract number should be submitted to the following address:

Mississippi Board of Trustees State Institutions of Higher Learning
Attention: IHL contact will be designated upon execution of contract.
3825 Ridgewood Road
Jackson, MS 39211-6453

IHL EXECUTIVE OFFICE CONTACT:

Name: _____ Phone Number: _____

Contractor Certification: I understand I must submit a signed W-9 Form (available at the following link: <http://www.mississippi.edu/finance/downloads/fw9.pdf>). I agree to the terms noted above and to the general terms and conditions referenced in Appendix A. I am an independent Contractor for the IHL; therefore, the IHL is not liable for Social Security Contributions pursuant to Section 418, 42 U.S. Code. Furthermore, IRS Form 1099 will be forwarded at the end of the calendar year if total payments exceed \$600.

Signature of Contractor: _____ Date: _____

The Mississippi Board of Trustees Institutions of Higher Learning acceptance of contract:

_____ Date: _____

Commissioner (or approved designee)

1. **INDEPENDENT CONTRACTOR:** The Contractor will act as an independent contractor under this contract, and neither the Contractor nor any employee or agent of the Contractor is an employee of the IHL Executive Office. Nothing contained herein shall be deemed or construed by the IHL Executive Office, the Contractor, or any third party as creating the relationship of principal and agent, master and servant, partners, joint ventures, employer and employee, or any similar such relationship between the IHL Executive Office and the Contractor. Neither the method of computation of fees or other charges, nor any other provision contained herein, nor any acts of the IHL Executive Office or the Contractor hereunder, create or shall be deemed to create a relationship other than the independent relationship of the IHL Executive Office and the Contractor. Contractor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the State. IHL Executive Office shall be at no time legally responsible for any negligence or other wrongdoing by the Contractor, its servants, agents, or employees. The IHL Executive Office shall not withhold from the contract payments to the Contractor any federal or State unemployment taxes, federal or State income taxes, Social Security tax, or any other amounts for benefits to the Contractor. Further, the IHL Executive Office shall not provide to the Contractor any insurance coverage or other benefits, including Workers' Compensation, normally provided by the State for its employees.

The Contractor will provide the services and achieve the results specified by the IHL, free from the direction or control of the IHL as to means and methods of performance.

2. **INSURANCE.** The Contractor, as an independent contractor, shall provide proof of Comprehensive General Liability insurance, Worker's Compensation insurance and Commercial Auto Liability Insurance. The Contractor must provide a Certificate of Coverage mailed to the Board of Trustees of State Institutions of Higher Learning, Office of Contracts and Grants Compliance, 3825 Ridgewood Road, Suite 417, Jackson, MS, 39211. The Certificate of Coverage should, at a minimum, contain the name of the carrier, effective and expiration dates of coverage, a description of the covered perils, and the amount of coverage by peril, the name and mailing address of the insurance company, and the name and mailing address of the insurance agent. The Certificate of Coverage must name the Board of Trustees of State Institutions of Higher Learning as an additional insured. The Comprehensive General Liability coverage and the Commercial Auto Liability coverage shall be a minimum amount of Three Million Dollars (\$3,000,000) per occurrence and Three Million Dollars (\$3,000,000) annual aggregate through an insurance company with a Best rating of A- or higher and a financial size Class X or higher approved by the Mississippi Department of Insurance.
3. **NONRESIDENT ALIEN.** If the Contractor is a nonresident alien performing services in the United States or its territories, the Contractor agrees that proof of visa status (I-94 Form) documenting authorization to receive payment for work performed will be provided to the IHL prior to payment by the IHL.
4. **AUTHORITY TO CONTRACT.** The CONTRACTOR warrants (a) is authorized to enter into this agreement; (b) that it is qualified to do business and in good standing in the State of Mississippi; (c) that entry into and performance under this agreement is not

restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind; and (d) notwithstanding any other provision of this agreement to the contrary, that there are no existing legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this agreement.

5. **ACCESS TO RECORDS.** The Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices to sufficiently reflect properly all costs of whatever nature claimed to have been incurred in the performance of the Contract. The IHL, any sponsor, the state of Mississippi, or the Comptroller General of the United States or their authorized representatives shall have access to the books, documents, papers, and records of the Contractor which are directly pertinent to the Contract for the purpose of making audit, examination, excerpts and transcripts. Such books and records shall be maintained by the Contractor for five (5) years from the date of the completion of work, however, if any litigation or other legal action, by or on behalf of the State of Mississippi has begun that is not completed at the end of the five (5) year period, or if audit findings, litigation or other legal action has not been resolved at the end of the five (5) year period, the records shall be retained until resolution. Contractor is responsible for any audit discrepancies involving deviation from the terms of the Contract and for any commitments or expenditures in excess of amounts authorized by the IHL.
6. **OWNERSHIP OF WORK PRODUCTS.** The working papers prepared in conjunction with the services under this contract constitute confidential information and will be retained by the audit FIRM in accordance with its policies and procedures. The audit FIRM will provide the IHL Board and the Mississippi Office of the State Auditor the right of access to the work papers as necessary.

Audit working papers will also be made available upon request to the cognizant agency or oversight agency for audit or its designee, a Federal agency providing direct or indirect funding, or the Government Accountability Office (GAO) at the completion of the audit, as part of a quality review, to resolve audit findings, or to carry out oversight responsibilities.

The audit FIRM is prohibited from use of the above described information and/or materials without the express written approval of the IHL Board.

Any discovery, patent, copyright, invention, work papers, software, software applications, written materials, publications, data, information, by-product or end-product arising as a direct result of the performance of this Contract shall be the sole property of the IHL.

7. **TERMINATION.** This contract may be terminated as follows:

- a. Termination Upon Bankruptcy:

This contract may be terminated in whole or in part by the IHL Board upon written notice to the audit FIRM, if the FIRM should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by the FIRM of an assignment for the benefit of its creditors. In the event of such termination, the audit FIRM shall be paid an amount for all services actually

performed pursuant to this contract, but in no case shall said compensation exceed the total contract price; or

b. Termination for Convenience:

The IHL Board with the prior written consent of the Office of the State Auditor may terminate this contract with or without cause, by providing a fifteen (15) day written notice of termination to the audit FIRM;

c. Termination for Cause:

If, through any cause, the audit FIRM shall fail to fulfill in a timely and proper manner, as determined by the IHL Board, its obligations under this contract, or if the FIRM shall violate any of the terms or conditions of this contract, and that breach continues for ten (10) days after the FIRM receives written notice from the IHL Board, then the IHL Board with the prior written consent of the Office of the State Auditor shall thereupon have the right to terminate this contract. In the event of termination for cause by the IHL Board, in addition to other remedies provided herein or available at law or in equity, the audit FIRM shall bear all cost associated with the issuance of a new contract for audit services, including, but not limited to, the costs of reissuing another request for qualifications and additional costs resulting from an acceleration of services necessary for the timely completion of such auditing services.

In the event of termination, the audit FIRM will be entitled to payment for services in an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the FIRM covered by the contract, less payments previously made. In no instance will a payment be made in excess of the contract amount. In addition, all finished or unfinished tests, surveys, checklists, forms, manuals, reports or other material prepared by the audit FIRM under this contract shall become the property of the IHL Board.

Notwithstanding the above, the audit FIRM shall not be relieved of liability to the IHL Board for damages sustained by the IHL Board by virtue of any breach of this contract by the FIRM, and the IHL Board may withhold any payments to the FIRM for the purpose of set off until such time as the exact amount of damages due the IHL Board from the FIRM are determined. The IHL Board may also pursue any remedy available to it in law or in equity.

8. **IHL EXECUTIVE OFFICE EMPLOYEES.** The Contractor will not hire any employee of the IHL Executive Office to perform any services covered by this agreement without prior written approval from IHL Executive Office Human Resources Department.
9. **CONFIDENTIAL INFORMATION.** In connection with the contract hereunder, the IHL and the Contractor shall be free to exchange such technical information and know-how as may be necessary to carry out the objective of the agreement. Neither party shall be required to disclose to the other party technical information and know-how which it received in confidence from a third party or which is developed for a third party under

conditions giving rise to an obligation or confidentiality. Employees of the IHL Executive Office performing services hereunder shall enter into confidentiality agreements should such exchange of information be needed to conduct the project. The IHL shall have the appropriate individuals execute said agreements and provide copies to the Contractor. The Contractor shall have the appropriate individuals execute said agreements and provide copies to the IHL.

Notwithstanding any provision to the contrary contained herein, it is recognized that the IHL is a public agency of the State of Mississippi and is subject to the Mississippi Public Records Act, section 25-61-1, et seq., Miss. Code Ann. If a public records request is made for any information provided to the IHL pursuant to this agreement, the IHL shall promptly notify the disclosing party of such request. The disclosing party shall promptly institute appropriate legal proceedings to protect its information. No party to this agreement shall be liable to the other party for disclosures of information required by Court order or required by law.

10. ACKNOWLEDGEMENT OF SPONSORSHIP. The Contractor agrees that, in any publication, acknowledgement shall be made of sponsorship by the IHL and/or other sponsor by use of the following statement “This work was performed under the sponsorship of the Mississippi Board of Trustees State Institutions of Higher Learning. This work does not necessarily represent the views of the IHL or the sponsoring agency.” If the publication is copyrighted, the statement “Reproduction of this article, with the customary credit to the source, is permitted,” shall be added. With the exception of acknowledging sponsorship of research, the name of the IHL may not be used in publications, news releases, advertising, speeches, technical papers, photographs, and other releases of information regarding this Contract or data developed under this Contract without written approval of the IHL.

11. APPLICABLE LAW. The contract shall be governed by and construed in accordance with the laws, regulations, and procedures of the State of Mississippi, excluding its conflicts of laws provisions, and any litigation with respect thereto shall be brought in the courts of the state. The CONTRACTOR shall comply with applicable federal, state, and local laws and regulations. If a court determines that any provision of this contract is not enforceable against IHL, the CONTRACTOR agrees that the individual signing this agreement on behalf of IHL is not personally responsible or liable for any of the obligations and duties contained herein.

12. COMPLIANCE WITH LAWS. Contractor understands that the [State] is an equal opportunity employer and therefore, maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful and Contractor agrees during the term of the agreement that Contractor will strictly adhere to this policy in its employment practices and provision of services. Contractor shall comply with, and all activities under this agreement shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified. .

- 13. INDEMNIFICATION.** To the fullest extent allowed by law, the CONTRACTOR shall indemnify, defend, save and hold harmless, protect, and exonerate IHL, its Commissioner, Board Members, officers, employees, agents and representatives, and the State of Mississippi from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever, including, without limitation, court costs, investigative fees and expenses, attorney's fees, arising out of or caused by the CONTRACTOR and/or its partners, principals, agents, employees and/or Subcontractors in the performance of or failure to perform this agreement. In IHL's sole discretion, the CONTRACTOR may be allowed to control the defense of any such claim, suit, etc. In the event the CONTRACTOR defends said claim, suit, etc., the CONTRACTOR shall use legal counsel acceptable to IHL; the CONTRACTOR shall be solely responsible for all costs and/or expenses associated with such defense, and IHL shall be entitled to participate in said defense. The CONTRACTOR shall not settle any claim, suit, etc., without IHL's concurrence, which IHL shall not unreasonably withhold.
- 14. CONFLICT OF INTEREST.** The Contractor affirms that, to the best of his/her knowledge, there exists no actual or potential conflict between Contractor's family, business, or financial interests and his/her services under this Contract, and, in the event of change in either his/her private interests or service under this Contract, he/she will inform the IHL regarding possible conflict of interest that may arise as a result of such change. In the event that an organizational conflict of interest should arise concerning this procurement, the IHL Board shall have the authority and responsibility to make the affirmative determination as to whether: (1) there would exist a conflict as a result of an award or (2) that such conflict would be avoided after appropriate conditions are included in the award instrument. In the event that the IHL Board determines that a conflict of interest exists and that such conflict cannot be avoided by including appropriate conditions in the award instrument, the IHL Board may nevertheless authorize the award, if a determination is made that it is in their best interest to make such award, and the award instrument includes appropriate conditions in such contract agreement, or arrangements to mitigate such conflict.
- 15. AVAILABILITY OF FUNDS AND EXPENDITURE APPROVAL.** It is expressly understood and agreed that the obligation of IHL to proceed under this Agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds. If the funds anticipated for the continuing fulfillment of the Agreement are at any time not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which the funds were provided or if funds are not otherwise available to IHL, IHL shall have the right upon ten (10) working days written notice to the CONTRACTOR, to terminate this Agreement without damage, penalty cost, or expense to IHL of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination. The CONTRACTOR shall be entitled to payment for services in the amount determined under paragraph 14(c) or the amount of available funds, whichever is less.

- 16. SEVERABILITY.** If any term or provision of this contract is prohibited by the laws of the State of Mississippi or declared invalid or void by a court of competent jurisdiction, the remainder of the contract shall be valid and enforceable to the fullest extent permitted by law.
- 17. TOTAL AGREEMENT.** This Contract contains the entire agreement between the parties, superseding any prior or concurrent agreements as to the services being provided, and no oral or written terms or conditions that are not contained in this Contract shall be binding. This Contract may not be changed except by mutual agreement of the parties. Any such change shall be reduced to writing and signed by both parties.
- 18. CONTRACT CHANGES.** The IHL and the Mississippi Office of the State Auditor may, at any time, by written order, make changes within the general scope of the contract or any of its task orders as to the services or work to be performed. If such changes cause an increase or a decrease in the CONTRACTOR's cost or time required to perform any services under this contract or assigned task orders, whether or not changed by an order, the IHL shall make an equitable adjustment and modify this contract, or the appropriate task order, in writing. The CONTRACTOR must assert any claim for adjustment under this clause in writing within thirty (30) days from the date the CONTRACTOR received the IHL's notification of change, unless the IHL grants additional time before the date of final payment. No services for which the CONTRACTOR will charge any additional compensation shall be furnished without the prior written authorization of the IHL.
- 19. ASSIGNMENT/TRANSFER/SUBCONTRACTING.** The Contractor shall not assign, transfer, subcontract, or otherwise give to or impose on any other party any obligation or right of the Contractor under this Contract, without prior written consent of the IHL and the Office of the State Auditor.
- 20. THIRD PARTY ACTION NOTIFICATION.** The CONTRACTOR shall give the IHL prompt notice in writing of any action or suit filed, and prompt notice of any claim made against the CONTRACTOR by any entity that may result in litigation related in any way to this contract.
- 21. EMPLOYMENT VERIFICATION.** CONTRACTOR represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act (Senate Bill 2988 from the 2008 Regular Legislative Session) and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. CONTRACTOR agrees to maintain records of such compliance and, upon request of the State, to provide a copy of each such verification to the State. CONTRACTOR further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. Contractor understands

and agrees that any breach of these warranties may subject Contractor to the following: (a) termination of this Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public, or (b) the loss of any license, permit, certification or other document granted to Contractor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. In the event of such termination/cancellation, Contractor would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

22. WAIVER. Failure of either party hereto to insist upon strict compliance with any of the terms, covenants and conditions hereof shall not be deemed a waiver or relinquishment of any similar right or power hereunder at any subsequent time or of any other provision hereof, nor shall it be construed to be a modification of the terms of this contract.

23. DEBARMENT SUSPENSION. The Contractor certifies, by the initials of the primary signatory below, that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs under Executive Order 12549, Debarment and Suspension, codified at 29 CFR Part 98, and that it will not subgrant with individuals or organizations which are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal Assistance Programs_____ Initials of Primary Signatory _____ Date.

24. NOTICE. Any notice required or permitted to be given under this contract shall be in writing and sent by certified United States mail, postage prepaid, return receipt requested, to IHL by writing the Mississippi Institutions of Higher Learning, Attention: Office of Contracts and Grants Compliance, 3825 Ridgewood Road, Suite 417, Jackson, MS 39211 or to the CONTRACTOR by writing_____.

Contractor

Institutions of Higher Learning

By: _____

By: _____

Name: _____

Name: Dr. Al Rankins

Title: _____

Title: Commissioner of Higher
Education

Company: _____

Date: _____

Date: _____
